

# Policy Foundations of Universal Design for Learning

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*I can still recall the smell, pungent mix of ammonia and human waste. I can still recall the rows of metal beds, the children and adults who were forced to lie in them, day and night. I can still recall the racket in the ward, the bedridden residents' crying, moaning, yelling, and pleading. The year was 1971, and I was an undergraduate taking my first course in special education . . .*

*Our professor assured us that these children and adults were capable of far more than was apparent during our visit, and that we would visit other sites where we would see that these students could learn and have full lives. These other sites included special schools and classes in which more fortunate students were learning to read, write, and laugh. However, though some children were getting a chance at a better life, children with significant disabilities were not guaranteed a right to an education. They could be denied entrance to school.*

*Thomas Hehir, New Directions in Special Education (2005, p. 1)*

Since the 1970s, policy, practice, and litigation have pushed educators to think of better ways to educate students with disabilities in school. The dynamic of the major federal special education law, the Individuals with Disabilities Education Act (IDEA), is different from other education laws in that, from the beginning, advocates have sought to fundamentally change schools and other systems that serve children and youth rather than keep them static. And, given the strength of the parent and disability lobbies, Congress has frequently responded by strengthening the law and expanding its provisions. As a result, when there are innovations in practice, they tend to become incorporated into policy, and policy pushes educators toward new innovations. Further, parents have significant leverage to promote change through exercising their due process rights under IDEA. Though relatively few parents go to hearings, the few who do can have a major impact on the education system due to the high-stakes nature of these disputes (Hehir, 1990).

The experience of including students with significant cognitive disabilities is an example of this. Innovative educators, pushed by parents and supported through IDEA discretionary programs, began experimenting with ways to include children with significant disabilities in general education classrooms. As these children became successful, IDEA was amended in 1997 to provide greater impetus to this movement through such provisions requiring individualized education plans (IEPs) to include a greater focus on access to the general education curriculum and placement-neutral funding formulas. Further, parents successfully used the due process system to leverage change. What was once an experimental innovation is now widespread. Though we need to continue to promote the development of better inclusive options, children with significant disabilities are being included in every state and most school districts.

This same dynamic has led to greater access for children with disabilities and is currently building a foundation for educators to embrace Universal Design for Learning (UDL). The development of UDL, a new and innovative concept in the nineties supported through IDEA discretionary programs, is now incorporated in IDEA 2004 with its requirements for National Instructional Materials Accessibility Standard (NIMAS) and the movement toward response to intervention (RTI). A detailed discussion of these changes follows.

## The Historical Perspective

### Section 504 and IDEA—The 1970s

The legal foundation on which both inclusion and UDL have been based predates these concepts. The passage of Section 504 of the Rehabilitation Act in 1973 and IDEA (P.L. 94-142) in 1975 laid the foundation for UDL by emphasizing the need to educate students with disabilities in the “least restrictive environment” (LRE). In other words, the law now mandated that, “as much as appropriate,” students with disabilities should be educated in general education classes with the appropriate aids and supports. Removal from the mainstream should occur only when inclusion cannot work. “As much as appropriate” is relatively vague, making it a dynamic standard rather than a static one, and ultimately it has been defined by the courts. In the 1970s, most practitioners considered integration for students with disabilities appropriate for those who could make it on their own with relatively little support. The definition of “as much as appropriate” expanded over time as practitioners developed more effective ways to educate students with disabilities in mainstream environments, and the courts have recognized these innovations.

### Legal Foundation in the 1980s and 1990s

In the 1980s, parents—particularly parents of children with mental retardation—started challenging the segregation of their children, relying heavily on the concept of LRE and the due process provisions of IDEA. Even though segregation was widespread, parents argued that segregation was inconsistent with the intentions of LRE. In the field, innovative educators demonstrated that students with disabilities could be integrated into the mainstream, and this gave the courts the evidence they needed to rule in favor of the parents’ case for inclusion.

In 1981, *Campbell v. Talladega* led the charge by questioning the efficacy of segregation and questioning low expectations. The court’s ruling requiring that students with disabilities have contact with nondisabled peers established the precedent toward inclusive education. *Roncher v. Walter* in 1983 introduced the “portability standard,” which acknowledged that if services could be offered in a nonsegregated setting, then a segregated placement was inappropriate. In 1989, *Daniel RR v. State Board of*

*Education* established the two-pronged test to determine whether an inclusive setting is the appropriate placement: With the use of aids and services, can the child be educated in the regular education classroom? And if the child must be removed from the general education classroom, is the child participating with nondisabled peers to the maximum extent appropriate? Finally, in *Sacramento City School District v. Holland* (1994), the Ninth Circuit Court of Appeals upheld a district judge's ruling that inclusion in a regular class is the least restrictive environment—and the U.S. Supreme Court refused to hear the case, allowing that ruling to stand.

These rulings built a strong legal foundation against removal unless school districts had tried to support students in general education classrooms prior to removal. These decisions, the mechanisms of LRE, and due process would ultimately push inclusion in a very powerful way to change practice in American schools and set a foundation for UDL.

## Technology and Integration—The Early 1990s

By the early 1990s, the integration of students with more complex needs became more commonplace in American schools, and two major developments—advances in technology and the concept of universal design—helped support this integration. The concept of universal design, especially in architecture and in technology development, had begun to penetrate the culture. Disability policy, including the Assistive Technology Act, ensured that new technologies were being developed to be accessible for people with disabilities. Televisions included closed captioning capabilities, public buildings had curb cuts and automatic doors, and so forth.

In light of these advancements, conversations began about how to apply universal design to education. Understanding the developments in technology, we had to start thinking about curriculum and classroom organization in the same way. Organizations such as CAST (Center for Applied Special Technology) began to use technology as a way to support students in inclusive environments through programs like WiggleWorks (1993), an early literacy program that blended multimedia and computer supports with classic, age-appropriate texts.

It should be noted here that IDEA's discretionary programs played a major role in spurring this innovation. For instance, Madeleine Will, former assistant secretary of education for special education and rehabilitation, promoted inclusion through systems change and regular education initiative grants. During the Clinton years, UDL innovation led by CAST received significant support from the IDEA technology program and the Tech Act under the leadership of assistant secretary of education for special education and rehabilitation Judy Heumann. The dynamic interaction between innovation and regulatory change is established in this following discussion of the 1997 reauthorization of IDEA.

## IDEA 1997

In the early 1990s, the Americans with Disabilities Act put tremendous emphasis on people with disabilities gaining access to everything in life; as a result, when IDEA came up for reauthorization in the mid-1990s, the concept of access was central to the discussions. Further, research funded under IDEA was calling into question the widespread practices of segregating individuals with disabilities and basing their specialized curriculum on low expectations. With the 1997 amendments to IDEA, the law now redefined special education as meeting the unique needs that arise out of a child's disability in a way that enables the child to access the general education curriculum. In other words, if a child needs to read braille to access the curriculum, the school district is responsible for teaching braille to that student. In addition to this overall emphasis on access, specific provisions of IDEA 1997 reinforced the potential for UDL to address the challenges imposed by the law.

The regulations of IDEA 1997 included a provision stipulating that the need for a modified curriculum does not justify removing students from the classroom. As a result, general and special education teachers have to consider how to modify the curriculum in the general education setting. Emphasizing access, accommodations, and modifications in the regular classrooms opened the possibilities for the UDL framework to support teachers in meeting these requirements.

An affirmative technology consideration that supports UDL implementation was included in the 1997 law. The regulations require the IEP team to "consider whether the child needs assistive technology devices and services," [§300.346(a)(2)(v)]. As it related to accessing the curriculum and meeting the unique needs that arise out of their disability, IDEA required school districts to consider the technology needs of children with disabilities. With that as an explicit requirement, school districts had to consider technologies such as communication devices and screen readers. Even though UDL extends beyond technology, with the concept of access in the law, people began to shift their way of thinking about educating children with disabilities, making discussions about UDL possible.

Finally, IDEA 1997 emphasized the inclusion of students with disabilities in state accountability systems. This requirement was established before practitioners knew the most effective way to include students in large-scale assessments. Practitioners and policy makers have been trying to negotiate this challenge through accommodations or modifications to assessments, but these negotiations continue to raise concerns over assessment validity. Considering the UDL framework in addressing the question of how we can best include students with disabilities in assessment systems may help to reframe the question—how can we design assessments to anticipate the needs of and be accessible for students with disabilities?

## NCLB and IDEA 2004

The education of students with disabilities has continued to shift further toward inclusion and access with No Child Left Behind (NCLB) and IDEA 2004. In NCLB, students with disabilities are included as a subgroup for which schools are held accountable. This inclusion modifies our understandings beyond merely providing access to the general education curriculum to ensuring progress in that curriculum. Schools now need to consider the performance of students with disabilities and make sure their curriculum provides opportunities for those students to succeed.

IDEA 2004 continues to move policy in a UDL direction through the NIMAS and RTI provisions. NIMAS provided the first explicit legal mention of universal design by requiring publishers and school districts to have digitized versions of texts. The statute requires that the state education agency:

- (1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to
  - (i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAS electronic files containing the contents of the print instructional materials using the NIMAS; or
  - (ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. [§ 300.172(c)(1)]

The RTI provisions encourage schools to rethink identification of children with certain disabilities with the understanding that all students may struggle in some way with the curriculum and should be provided interventions.

Looking back, the intersection between the LRE principles in special education law, with the powerful leverage of due process, and the increased knowledge about how to incorporate kids with more complex needs in integrated environments has had a synergistic impact. In other words, policy and practice are impacting each other. As we continue to see the power of Universal Design for Learning in practice and support UDL in policy, we can build on the successful foundation and improve educational opportunities for students with disabilities. We should expect that parents will advocate for UDL in due process hearings and that future reauthorizations will reflect a greater emphasis on UDL.

## Policies that Support UDL

Some policies currently in place, including RTI and positive behavior interventions and supports (PBIS), help support the concepts of Universal Design for Learning and exemplify the possibilities for the UDL framework in our classrooms.

RTI seeks to identify students who need additional learning support, scaffolds appropriate interventions, and monitors student progress. For instance, RTI calls for designing reading programs that assume every kindergarten, first, second, and third grade will have struggling readers who need a differentiated approach to their reading. Teachers work to design reading programs with the assumption that students come to the task of reading with very different capabilities, while still maintaining the expectation that all students will learn to read.

Designing school behavior programs or discipline programs in a universal way, such as PBIS, is another example of Universal Design for Learning. PBIS requires school discipline programs to assume that students' ability to handle behavior expectations will vary and to support students in developing the behaviors needed to be successful in school and in life.

To implement UDL successfully, we need to support and train teachers to understand the fundamental UDL concepts and support them in the classroom. The inclusion of UDL in the Higher Education Opportunity Act will build the capacity of pre-service programs to teach the principles of UDL, but we also need to invest in in-service training. Once teachers are in the classroom, they can see the applicability of UDL and are receptive toward changing their practices. The model of anticipating diversity in the design of curricula and policies is a form of UDL and can greatly enhance the performance of schools both in the United States and all over the world. Schools, districts, and states can do this now—we know how to meet the needs of diverse learners, and resources are available.

## Policy Considerations

Acknowledging the powerful impact policy has had in the education of students with disabilities reinforces the need for policy makers to consider supporting the implementation of UDL. Even though there is a policy foundation for UDL implementation, there are notable cracks in the foundation, especially with regard to assessment policies. There is a big disconnect between how we evaluate children in a high-stakes environment and what we know is the best way for students to demonstrate what they know. UDL encourages students to learn in the way that is most efficient and effective for them. If we teach students to be efficient and effective learners, we need to evaluate them in the same way.

Assessments are standardized for all students because we deem that to be valid, but assessments lose validity if they assess characteristics of a disability rather than the intended material. For instance, some technologies that enhance instruction and help students to be efficient learners are not allowed in testing regimes. In English language arts testing, only a few states permit the use of a screen reader. A dyslexic student who is print disabled is not allowed to effectively demonstrate learning when taking the test. Even though we are trying to assess reading comprehension, the student flunks because of slow reading fluency, which we already know is that student's deficit.

States should examine their assessment policies as they relate to accommodations and Universal Design for Learning to avoid these unintended consequences. In an era of NCLB, educators raise concerns about how assessment drives instruction, but if states retool their assessments to encourage effective learning, teachers will be able to support effective learning.

## The Promise of UDL

Policy, particularly federal policy, has an enormous influence on the education of students with disabilities and has been a major factor in improving the educational status of these students (Hehir, 2005). In particular, policy has evolved over the years to focus not just on expanding access to educational spaces but to improving educational outcomes of students with disabilities.

This shift in emphasis—from access to learning environments to access to *learning itself*—is a key tenet of UDL (Rose & Meyer, 2002). In a sense, it is the bridge between special education and general education: a concern that all learners get a high-quality education. One of the challenges we face in American education is to reach students who have not traditionally done well in the education system, including students with disabilities, English language learners, and children from low socioeconomic backgrounds. Currently, our learning environments and curricula are too restrictive to support effective and efficient learning for all students. UDL creates a framework to reduce the barriers in education, anticipate the diversity in our everyday classrooms, and embed support into our curricula. The implementation of a UDL framework will open doors in education to all students, especially those not effectively served by our current system.

Change takes place slowly in education, and an important precondition is that teachers be receptive to the idea of change. More students with disabilities are being educated in the general education classroom now than fifteen years ago. Along with this change has come an attitudinal shift. Today, most general education teachers who have students with disabilities in their classrooms think that the students belong there (Wagner, Newman, & Cameto, 2004). This attitude shift is the important precondition. Teachers recognize the appropriateness of diversity in their classroom, and UDL can help give them the tools to effectively accommodate that diversity.

When I do workshops on UDL, teachers love it because I give them tools to do something that is difficult to do—teach all kids effectively. It is one thing to say it is right to integrate students with disabilities into typical classrooms; it is quite another to figure out how to do it well and in a way that allows students to access the curriculum. It is not easy. It is something that requires knowledge, tools, and support. And it requires policies that support UDL implementation.

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